

DRUG AND ALCOHOL TESTING POLICY FOR THE CITY OF SANTA FE
FIRE DEPARTMENT
March 2003

SECTION 1. POLICY

It is the goal and policy of the City of Santa Fe ("City") and the Santa Fe Firefighters Association ("SFFA") for the employees of the Fire Department to maintain a drug free work environment through the use of a reasonable employee drug and alcohol testing program. The following reasons support this Policy:

- A. **PUBLIC SAFETY:** The Fire Department is charged with the responsibility of fighting fires and providing emergency medical services within the City. In essence it is charged with protecting lives and property. These responsibilities have inherent dangers not present in most other governmental functions. An agency charged with these kinds of responsibilities cannot tolerate any kind of conduct on the part of employees which would impair their judgment or skills and thus create an unreasonable risk of harm to the public and other employees.
- B. **PUBLIC TRUST AND INTEGRITY:** The public has the right to demand that those who are charged with protecting lives and property are not attempting to perform their jobs in an impaired state. The use of controlled substances compromises public trust.
- C. **EMPLOYEE MORALE/SAFETY:** Employees must be able to depend on their co-workers being reliable, effective, alert, and co-operative. Employees must work together in sometimes very dangerous and tense situations with great potential for harm to the public and other employees. Conduct on the part of employees which impairs their ability to perform their duties places the safety of their co-workers in jeopardy. It may also have a bad effect on the morale of other employees because of a lack of trust in those who use controlled substances. Such conduct interferes with the mission and responsibilities of the Fire Department.
- D. **LOSS OF PRODUCTIVITY:** It is well known that employee use of drugs leads to high rates of absenteeism and sick leave. It also increases the risk of on the job injuries with the resultant increase in workers' compensation and medical costs. The Fire Department may have to pay increased overtime, consolidate functions, and require other employees to take up the slack. This results in a loss of productivity to the Department and

increased costs. It may also place additional stress on other employees who must fill in, often having to work excessive overtime.

As part of its efforts to promote employee wellness, the City maintains an Employee Assistance Program (EAP) and encourages employees to voluntarily seek assistance regarding substance abuse. Similarly, supervisors should know the working habits of their employees in order to observe anomalies in behavior that might flag substance abuse. Supervisors bear a responsibility to their employees to instruct, guide, and counsel them, and to the Department to ensure high standards of performance.

SECTION 2. PURPOSE

The purpose of this Policy is to offer guidelines to ensure an employee's drug-free status as a condition of employment and to provide procedures for drug/alcohol testing.

Note: This rule or regulation is for internal use only, and does not enlarge an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety of care. Violations of this policy, if proven, can only form the basis of a complaint by this Department, and then only in an administrative setting.

SECTION 3. DEFINITIONS

ALCOHOL means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol's including methyl and isopropyl alcohol.

APPLICANT is an individual who is seeking to be employed in a position with the Fire Department, which is covered by the collective bargaining agreement between the City and the SFFA.

CONTROLLED SUBSTANCE is marijuana, cocaine, opiates, amphetamines and phencyclidine.

DRUG TEST a urinalysis test to detect drugs administered under approved medical conditions and procedures.

DRUG ALCOHOL PROGRAM MANAGER is a city employee responsible for administering the drug and alcohol-testing program.

EMPLOYEE refers to an (1) individual employed in a bargaining unit position with the Fire Department, which is covered by the collective bargaining agreement between the City and the SFFA or the City and AFSCME; (2) probationary employee; (3) individual employed in a supervisory or management position.

MEDICAL REVIEW OFFICER (MRO) means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the City's drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result together with the individual's medical history and any other relevant biomedical information.

SAFETY SENSITIVE EMPLOYEE means an employee who performs the duties of a safety-sensitive position as identified in this policy.

SAFETY SENSITIVE POSITION means a position which requires the employee to perform duties which impact the safety of the public and which expose the employee to hazardous conditions and requires responsibility for the physical safety of others. The City of Santa Fe has identified the following positions to be Safety Sensitive:

1. All uniformed members of the Fire Department, regardless of rank
2. Fire Apparatus Technician

SUBSTANCE ABUSE PROFESSIONAL is a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of alcoholism and Drug Abuse counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance related disorders.

VERIFIED NEGATIVE TEST means a drug/alcohol test result reviewed by a medical review officer and determined not to contain alcohol or prohibited drugs or their metabolites above the cutoff levels established for laboratories approved to conduct Department of Transportation ("D.O.T.") testing.

VERIFIED POSITIVE TEST means a drug/alcohol test result reviewed by a medical review officer and determined to contain alcohol or prohibited drugs or their metabolites above the cutoff levels established for laboratories approved to conduct D.O.T. testing.

SECTION 4. PROHIBITIONS AND RESPONSIBILITIES

- A. Each employee covered by this Policy is:
 1. Prohibited from possessing, selling, purchasing, manufacturing or transferring any controlled substance in violation of city, state or federal law, whether on or off duty.
 2. Prohibited from any use of any controlled substance in violation of city, state or federal law, whether on or off duty.
 3. Prohibited from consuming or possessing alcoholic beverages on duty.

4. Prohibited from the consumption of alcohol within four (4) hours of the employee's scheduled time to report for work and from consuming alcoholic beverages while operating a city vehicle or four hours (4) prior to operating such vehicle.
5. Prohibited from the consumption of alcohol within (8) hours following an accident or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first.
6. Required to submit to reasonable suspicion alcohol and/or drug testing when directed by the City of Santa Fe; and prohibited from tampering or attempting to tamper with such alcohol and/or drug test.

B. Each employee, under this Policy:

1. Shall be responsible for informing his/her supervisor when being prescribed medication that is covered under the terms of this policy that may impair on-the-job performance or affect their ability to perform work duties safely and efficiently.
2. Shall use medically authorized drugs or over the counter medications in a manner which will not impair on-the-job performance or affect their ability to perform work duties safely and efficiently. Employees may be required to provide proof of lawful prescription.
3. Shall promptly report to his/her supervisor whenever he/she observes or has knowledge of another employee who poses a hazard to the safety and welfare of others.
4. May be temporarily re-assigned to other duties during the time he/she is required to take prescribed medication which has the potential to impair on-the-job performance or affect their ability to perform work duties safely and efficiently.

SECTION 5. EDUCATION

Every employee will receive a copy of this Policy, and will receive a minimum of sixty (60) minutes of training regarding this Policy and the effects of prohibited

drug use and alcohol misuse that impacts an individual's biological, emotional, psychosocial well being. The effects of misuse can be seen in an individual's work performance, attitude and social interaction. Training shall be provided to each employee within 60 days of adoption of this Policy for current employees, and within 60 days of a new employee's date of hire.

All supervisory personnel responsible for determining whether reasonable suspicion exists to require a employee to undergo alcohol and/or drug testing will also receive a minimum of one hundred and twenty (120) minutes of training on the physical, behavioral, speech, and performance indicators of probable prohibited drug use and alcohol misuse.

SECTION 6. SUBSTANCES TESTED

A. Alcohol

Employees subject to alcohol testing will have a sample of their breath tested for the presence of the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol. A breath alcohol level of 0.04 or greater constitutes a positive test result. A confirmation test will be given if an employee's initial breath alcohol test level exceeds 0.04.

Any refusal to submit to an alcohol test, and all positive alcohol tests, will be reported immediately by the testing facility to the City of Santa Fe Drug and Alcohol Program Administrator.

B. Drugs

Employees subject to drug testing will have a sample of their urine tested for the presence of five (5) drugs, as follows:

1. Marijuana
2. Cocaine
3. Opiates
4. Amphetamines
5. Phencyclidine

All drug tests will be reported by the testing laboratory to a medical review officer (MRO) who will evaluate the results. After evaluation and interpretation, all verified positive test results will be reported by the MRO to the employee and to the City of Santa Fe Drug and Alcohol Program Administrator. Any refusal to submit to a drug test will be immediately reported by the collection site to the City of Santa Fe Drug and Alcohol Program Administrator.

With respect to verified positive drug tests, employees will be notified by the MRO that they have seventy-two (72) hours following this notification in which

they can request, at their own expense, that split urine specimen be tested by another Department of Health and Human Services (DHHS) certified testing laboratory. However, in the event that the split sample test is negative, the employee will be reimbursed for the test.

Failure to request testing of the split specimen within seventy-two (72) hours of being notified of a positive test by the MRO will result in the test results from the original specimen being accepted as the final test results.

SECTION 7. TYPES OF TESTING

The following tests will be required of all employees in accordance with the alcohol and drug testing procedures set forth in this Policy:

- A. Pre-employment tests
- B. Post-accident tests
- C. Random tests
- D. Reasonable suspicion tests
- E. Return to duty/Follow-up tests

SECTION 8. ALCOHOL AND DRUG TESTING PROCEDURES

This Policy incorporates all the applicable requirements for alcohol and drug testing procedures as set forth in Rule 16A for the City of Santa Fe's Transit Division. Specifically, the Policy incorporates the federal regulatory mandates for alcohol and drug testing procedures required for transportation workplace drug testing programs:

49 CFR PART 40
Subpart A
40.3 Definitions

Subpart B – Drug Testing
40.21 The drugs.
40.23 Preparation for testing.
40.25 Specimen collection procedures.
40.27 Laboratory personnel.
40.29 Laboratory analysis procedures.
40.31 Quality assurance and quality control.
40.33 Reporting and review of results.
40.35 Protection of employee records.
40.37 Individual access to test and laboratory certification results.
40.39 Use of DHHS – certified laboratories.

Subpart C – Alcohol Testing

- 40.51 The breath alcohol technician.
- 40.53 Devices to be used for breath alcohol tests.
- 40.55 Quality assurance plans for EBT's.
- 40.57 Locations for breath alcohol testing.
- 40.59 The breath alcohol testing form and log book.
- 40.61 Preparation for breath alcohol testing.
- 40.63 Procedures for screening tests.
- 40.65 Procedures for confirmations tests.
- 40.67 Refusal to test and uncompleted tests.
- 40.69 Inability to provide and adequate amount of breath.
- 40.79 Invalid tests.
- 40.81 Availability and disclosure of alcohol testing information about individual employees.
- 40.83 Maintenance and disclosure of records concerning EBTs and BATs.

It is the intent of this Policy that Fire Department employees subjected to testing will be provided with the same testing procedures, safeguards, confidentiality, chain of custody provisions and integrity of the testing process provided to transit employees pursuant to the federal regulations as adopted in Rule 16A. The collection site/medical lab, medical review officer, and substance abuse professional shall be the same as provided for transit employees. To the extent the above regulations conflict with the policy, the policy shall govern. For example, this policy and not the regulations shall govern the consequences of a positive test.

SECTION 9. PRE-EMPLOYMENT TESTING

- A. Applicants selected for hire will be required to undergo pre-employment testing. Applicants will be informed that they are subject to pre-employment drug testing at the time they apply for a covered position. Once a conditional job offer is made, the applicant shall have a urine sample collected and tested for evidence of the substances listed in Section 6. The time, date and location of the physical examination and drug test will be announced in advance of the test.
- B. Disqualification from Employment
 - 1. Applicants for initial hire will be disqualified from employment if they:

- a. fail to appear for the physical examination and urine collection on the designated day unless excused by the City for good and verifiable cause; or
 - b. refuse to provide a urine sample; or
 - c. attempt to alter, taint or otherwise provide a false sample; or
 - d. test positive for the presence of one of the substances listed in Section 6.
2. Persons who are disqualified from the position that required the pre-employment test shall be disqualified from applying for any covered position for a period of six (6) months. Applications from such persons will hereafter only be accepted if accompanied by a current, written statement from a licensed substance abuse professional verifying that the applicant is not then an abuser of alcohol and/or active user of drugs.

SECTION 10. POST-ACCIDENT TESTING

All employees in safety-sensitive positions as identified in this policy will be subject to post-accident alcohol and drug testing in accordance with the City's alcohol and drug testing procedures.

- A. A City of Santa Fe safety officer, Santa Fe Fire Department supervisor or other qualified person shall be responsible for making a determination whether a post-accident drug and alcohol test is required at the time any covered employee is involved in an accident. An "accident" requiring an alcohol and drug test is any accident where:
 1. a fatality has occurred; or
 2. the covered driver receives a citation under State or local law for a moving traffic violation arising from the accident during which injuries were sustained requiring the injured person to immediately receive medical attention away from the scene, or;
 3. the covered driver receives a citation under State or local law for a moving traffic violation arising from an accident during which any vehicle involved in the accident is disabled and towed away.
- B. The City of Santa Fe will also test any safety-sensitive employees whose performance could have contributed to the accident.

- C. Employees required to submit to post-accident drug and alcohol testing will be tested as soon as possible (in all cases drug tests shall be conducted within thirty-two (32) hours following the accident and alcohol tests shall be conducted within eight (8) hours of the accident).
- D. An employee required to submit to a post-accident drug and alcohol test will be transported by the City to the collection site and will be required to sign a consent form. The employee must provide a urine and breath sample unless it is determined by medical personnel present that the employee is medically unable to provide the required samples. Following the test, the employee will be relieved of duty with pay pending the City's receipt of the results of the tests from the MRO.
- E. It is the City of Santa Fe's policy that employees who are required to submit to a post accident drug and alcohol test will be subject to discipline in accordance with Section 15 of this policy if they:
 - 1. refuse to sign a consent form or refuse to provide a breath and/or urine sample (such as refusal shall constitute a verified positive drug and/or alcohol test result); or
 - 2. attempt to alter, taint, or otherwise provide a false sample; or
 - 3. test positive for the presence of one or more of the substances listed in Section 6 of this policy.
- F. Safety sensitive employees must be readily available for post-accident testing. If an employee fails to remain readily available, e.g., notifying supervisor where employee can be located if employee leaves scene of the accident prior to submitting to testing, the employee will be deemed to have refused to submit to testing which shall constitute a verified positive drug and/or alcohol test result. The requirement to immediately report for post-accident testing is stayed while an employee assists in resolution of an accident or receives medical attention following an accident. In such cases, the employee shall report for post-accident testing immediately after the employee completes provision of necessary post-accident assistance or after necessary medical attention is provided.

SECTION 11. RANDOM TESTING

- A. The City of Santa Fe will maintain a list of all employees in safety sensitive positions in the Fire Department. During each calendar year, alcohol and/or drug tests will be administered to these employees on a scientifically random number selection basis. Under the random selection process each employee will have an equal chance of being selected for

testing based on neutral criterion such as social security numbers. This process means that alcohol and drug tests are unannounced. Selected employees are required to report immediately for testing after notification of selection. The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year. All employees will remain in the random pool even after being selected for testing. Thus, it is possible for an employee to be selected for testing more than once within a given time period.

- B. Thirty five percent (35%) of the total number of safety sensitive employees shall annually be randomly tested for drugs and for alcohol.
- C. Employees selected for random alcohol and/or drug tests will be provided with transportation and will immediately report to the collection site where they will be required to provide a breath and/or urine sample.
- D. It is the City of Santa Fe's policy that employees will be subject to discipline in accordance with Section 15 of the Policy if they:
 - 1. do not appear and complete a random drug and/or alcohol test immediately following notification to appear for such tests, refuse to sign a medical authorization for an administrative alcohol and drug test or refuse to provide a breath and/or urine sample (such as refusal shall constitute a verified positive drug and/or alcohol test result); or
 - 2. Attempt to alter, taint, or otherwise provide a false sample; or
 - 3. Test positive for the presence of one or more of the substances listed in Section 6 of this policy.

SECTION 12. REASONABLE SUSPICION TESTING

- A. All employees may be required to submit to a reasonable suspicion alcohol and/or drug test.
- B. Employees who are reasonably suspected by a supervisor of violating this Policy will be required to submit to an alcohol and/or drug test in accordance with this Policy. A trained supervisor who makes a determination that a test is required will complete a form indicating the grounds for such determination. Reasonable suspicion must be based on a belief by a trained supervisor that an employee is using or has used drugs or alcohol in violation of this Policy and is drawn from specific objective and articulated facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:

1. observable phenomena, such as direct observation of alcohol or drug use and/or the physical symptoms or manifestations of being under the influence of alcohol or a drug such as appearance, speech or body odors;
 2. Abnormal conduct or erratic behaviors while at work, excessive absenteeism, tardiness, or deterioration in work performance;
 3. An arrest for drug related charges.
- C. An employee who is required to submit to an alcohol and/or drug test under this section must sign a consent form.
- D. Employees will be transported by the City to the collection site and will be required to provide a breath and/or urine sample. Following completion of the test, employees will be transported home and relieved of duty with pay pending the City's receipt of the results of the test from the MRO.
- E. It is the City of Santa Fe's policy that employees will be subject to discipline in accordance with Section 15 of this Policy if they:
1. Refuse to sign a consent form or refuse to provide a urine and/or breath sample (which refusal shall constitute a verified positive drug and/or alcohol test result); or
 2. Attempt to alter, taint, or otherwise provide a false sample; or
 3. Test positive for the presence of one or more of the substances listed in Section 6 of this Policy.

SECTION 13. RETURN TO WORK TESTING

Employees who have been disciplined in accordance with Section 15 of this Policy as a result of their first positive test indicating the presence of one or more of the substances listed in Section 6 will be required, prior to returning to work, to take a return to duty alcohol and/or drug test with a verified negative result in accordance with this Policy.

SECTION 14. FOLLOW-UP TESTING

Employees who have been disciplined in accordance with Section 14 of this Policy as a result of a positive alcohol and/or drug test required, upon return to work shall be subject to a minimum of six (6) unannounced drug and/or alcohol follow up tests during the first twelve (12) months following the employee's return to work, and further testing as recommended by the substance abuse professional for up to a maximum of sixty (60) months.

SECTION 15. CONSEQUENCES OF THE MISUSE OF DRUGS AND ALOCHOL

Any employee testing positive for any of the drugs specified in Section 6(B) of this Policy, or who has a breath alcohol concentration of 0.04 or greater, will be immediately removed from his/her position and placed on leave with pay status pending disciplinary action. Employees testing positive will be provided with information from the City's employee assistance program (EAP) regarding alcohol and/or substance abuse and the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs. The City will have no responsibility to pay for any necessary treatment on the part of the employee.

A. Consequences of a Positive Drug or Alcohol Test

1. Any job applicant who tests positive for drugs will not be hired. Any employee who has a second confirmed positive drug or alcohol test within ten (10) years will be terminated with due process from employment with the City. A second positive test more than ten years after a first positive test, and in conjunction with more than ten years of continuous, uninterrupted employment with SFFD, shall be treated as a first confirmed test under section 15.2. and 15.3.

2. Conditional Retention

It is the City of Santa Fe's policy that employees, who have a verified positive drug or alcohol test and are not subject to termination under Section 15A.1 or 15B of this Policy, will be offered conditional retention of employment if the employee:

- a) submits to an evaluation by a substance abuse professional approved by the City's EAP; and
- b) signs a conditional retention of employment agreement; and
- c) is determined by a substance abuse professional to require assistance in resolving problems associated with drug abuse and/or alcohol misuse (the employee must agree to attend a City of Santa

Fe approved treatment program and sign a monitoring agreement with the City's EAP to ensure successful completion of the treatment program specified by the substance abuse professional); and

- d) upon return to work, is subject to a return to duty drug and/or alcohol test and follow-up tests.

The employee who is conditionally retained must fully comply with the conditions of retention of employment, including successful completion of the treatment program specified by the substance abuse professional.

3. Discipline for a Positive Drug or Alcohol Test

Current employees who have a confirmed positive drug or alcohol test will immediately be removed from duty and disciplined as follows:

- a) Consequences for a Positive Drug or Alcohol Test:
 - (1) Employees with their first confirmed positive drug or alcohol test shall be suspended as follows: 24 hour shift employees shall receive a 120 hour suspension; 8 hour employees shall receive an 80 hour suspension.

B. Termination

It is the City of Santa Fe's policy that employees will be terminated with due process if the employee:

- 1. uses, possesses, sells, purchases, manufactures or transfers any controlled substance in violation of city, state or federal law, whether on or off duty, or consumes or is in possession of alcohol on duty.
- 2. consumes alcoholic beverages while operating a city vehicle; or four hours (4) prior to operating such vehicle; or within four (4) hours of the employee's scheduled time to report to work; or within eight (8) hours following an accident involving a city vehicle or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first.
- 3. refuses to submit to an alcohol and/or drug test when so directed by the City of Santa Fe, or tampers or attempts to tamper with an alcohol and/or drug test; or,

4. tests positive and was involved in an accident resulting in death, serious injury or extensive property damage; or
5. tests positive and is also being terminated for other misconduct which could independently result in their discharge; or
6. tests positive and has not completed the initial probationary period following hire into the employee's first position with the City of Santa Fe; or
7. does not appear and complete a follow-up drug and/or alcohol test within two (2) hours following notification to appear for such tests, refuses to sign a consent form or refuses to provide a breath and/or urine sample; or
8. has a second confirmed positive drug or alcohol test less than ten years after the first positive test as per Section 15.A.1.

SECTION 16. CONFIDENTIALITY

All testing will be conducted in accordance with the federal regulations to ensure test results are accurate and reliable. Further, the City will carry out this Policy in a manner that respects the dignity and confidentiality of those involved. No laboratory reports or test results shall appear in the employee's employment history unless they are a part of a disciplinary action taken. Laboratory reports and test results shall be placed in a special locked file maintained by the Drug Abuse Coordinator. Files relating to laboratory reports or test results maintained by the Drug Abuse Coordinator must be kept confidential and shall be disclosed only by consent of the patient. Test information, however, shall be released to the employee, the employer, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test. Upon request, an employee is entitled to obtain copies of any records pertaining to the employee's use of prohibited drugs, including any records pertaining to the employee's drug tests

SECTION 17. EMPLOYEE ASSISTANCE PROGRAMS/SELF-REFERRAL

The City of Santa Fe takes seriously its commitment to provide safe conditions to the public and its employees. Recognizing this commitment, the City maintains employee assistance programs that can provide access to professional services in an effort to aid any employee who has an alcohol or chemical dependency problem. Participation in this program is voluntary and all records regarding self-referral or acknowledgement will be kept confidential to the extent required by law.

All employees who suspect they may have alcohol or substance abuse problems are strongly encouraged to utilize employee assistance program resources before the problem affects their employment status. There will be no disciplinary action involved. Voluntary self-referral, however, shall not relieve the employee from responsibility for adequate job performance. Self-referral after notification of a required drug or alcohol test will not eliminate the requirement to take such a test and will not preclude the taking of disciplinary action against an individual who fails a required drug or alcohol test.

Any costs for counseling or rehabilitation shall be the responsibility of the employee. Questions about the City of Santa Fe's employee assistance programs should be addressed to the City's Safety Officer, who serves as the drug and alcohol program administrator.

SECTION 18. APPEALS

Any employee subject to discipline as a result of drug/alcohol testing will have the right to grieve the discipline pursuant to their respective collective bargaining agreement.